

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

STARR INDEMNITY &amp; LIABILITY COMPANY

(b) County of Residence of First Listed Plaintiff New York County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeffrey L. Silvestrini, Vernon L. Hopkinson, Cohne Rappaport & Segal,  
P.C., 257 E. 200 S., Ste. 700, Salt Lake City, UT 84147-0008,  
801.532.2666

**DEFENDANTS**

MONAVIE, INC. and MONAVIE, LLC

County of Residence of First Listed Defendant Salt Lake County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 2201

Brief description of cause:

Declaratory Judgment

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/23/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jeffrey L. Silvestrini

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Jeffrey L. Silvestrini (Bar No. 2959)  
Vernon L. Hopkinson (Bar No. 3656)  
Cohne Rappaport & Segal, P.C.  
257 E. 200 S., Ste. 700  
Salt Lake City, UT 84147-0008  
801.532.2666  
[jeff@crslaw.com](mailto:jeff@crslaw.com)  
[vern@crslaw.com](mailto:vern@crslaw.com)

Daniel J. Standish (*pro hac vice* to be filed)  
Parker J. Lavin (*pro hac vice* to be filed)  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
202.719.7000  
[dstandish@wileyrein.com](mailto:dstandish@wileyrein.com)  
[plavin@wileyrein.com](mailto:plavin@wileyrein.com)

Counsel for Starr Indemnity & Liability Co.

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

---

STARR INDEMNITY & LIABILITY COMPANY,  Plaintiff,  v.  MONAVIE, INC. and MONAVIE, LLC,  Defendants.
--

---

COMPLAINT FOR DECLARATORY  
JUDGMENT

Case No. 2:14-cv-00395-DN

Judge David Nuffer

Plaintiff Starr Indemnity & Liability Co. (“Starr”), by and through its undersigned counsel, brings this action for declaratory judgment against defendants MonaVie, Inc. and MonaVie, LLC (collectively, “MonaVie”), seeking a declaration that coverage is not available for three related lawsuits submitted for coverage by MonaVie under two claims-made insurance

policies Starr issued to MonaVie. In support of the Complaint, Starr alleges on knowledge, information and belief as follows:

### **NATURE OF THE ACTION**

1. Starr files this action seeking a judicial determination and declaration that two successive directors and officers (“D&O”) liability insurance policies – Resolute Portfolio For Private Companies Policy No. SISIFNL20071412 (the “2012 Policy”) and Resolute Portfolio For Private Companies Policy No. SISIFNL20071413 (the “2013 Policy”) (collectively, the “Policies” or the “Starr Policies”)<sup>1</sup> – issued by Starr to MonaVie do not afford coverage to MonaVie for three related lawsuits tendered to Starr for coverage on the grounds identified herein.

2. An actual and justiciable controversy has arisen and now exists relating to the parties’ respective rights, duties, and obligations under the Policies.

3. MonaVie reported under the 2012 Policy a lawsuit captioned *Parker, et al. v. MonaVie, Inc., et al.*, No.12-1983 (C.D. Cal.) (the “*Parker* action”), which is a putative class action brought by a consumer of MonaVie’s juice products alleging, *inter alia*, false and misleading representations in connection with the multi-level marketing scheme of MonaVie and its distributors of its “overpriced” juice by falsely promoting the health benefits of the juice.

4. MonaVie reported under the 2013 Policy lawsuits captioned *Pontrelli v. MonaVie, Inc., et al.*, No. 2:13-cv-4649 (D.N.J.) (the “*Pontrelli* action”), and *Gonzalez v. MonaVie, Inc., et al.*, No. CIVDS1309111 (Cal. Super. Ct., San Bernardino Cnty.) (the “*Gonzalez* action”), which

---

<sup>1</sup> Except as otherwise indicated, the relevant terms and conditions of the 2012 Policy and 2013 Policy are identical. Accordingly, this Complaint refers and cites to the 2012 Policy and 2013 Policy, collectively, as the “Policies” or the “Starr Policies.”

are putative class action complaints brought by consumers that were each filed on the same date by the same plaintiffs' counsel. Both the *Pontrelli* and *Gonzalez* actions allege, *inter alia*, false advertising in connection with MonaVie's multi-level marketing scheme and the allegedly inflated prices of its juices and false claims related to both health benefits of the juices and the benefits of becoming a MonaVie distributor.

5. Prior to the inception of the Policies, in March 2008, MonaVie was named as a defendant in a case captioned *Quixtar Inc. v. MonaVie, Inc., et al.*, No. 2:085-cv-209-BSJ (D. Utah) (the "*Quixtar* action"). The *Quixtar* action was brought against MonaVie by one of its competitors and alleges, *inter alia*, false advertising and unfair trade practices based on the promotion of false medical benefits of MonaVie's juice products. Upon information and belief, MonaVie provided notice of the *Quixtar* action to its D&O carrier at the time that action was filed, Zurich Insurance Company ("Zurich"), which provided MonaVie with a defense to the *Quixtar* action.

6. Two years later, and also prior to the inception of the Starr Policies, MonaVie was named as a defendant in *Oliver v. MonaVie, Inc., et al.*, No. CV-2010-644-1 (Ark. Cir. Ct., Miller Cnty.) (the "*Oliver* action"), a putative class action complaint brought by a consumer alleging, *inter alia*, false and misleading advertising in connection with MonaVie's multi-level marketing scheme of its juices and claims by MonaVie and its independent distributors that MonaVie's juices prevent and treat illnesses. MonaVie provided notice of the *Oliver* action to Allied World National Assurance Company ("Allied World"), its D&O carrier at the time of the *Oliver* action's filing.

7. The Policies each contain a Prior Notice Exclusion, which bars coverage for all Claims “alleging, arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related Wrongful Act(s) alleged or contained in any Claim which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy . . . , under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time.” Because the *Quixtar* and *Oliver* actions were each tendered to MonaVie’s prior D&O carriers, and because the *Parker*, *Pontrelli* and *Gonzalez* actions “alleg[e], aris[e] out of, [are] based upon or attributable to the same or essentially the same facts alleged, or to the same or related Wrongful Act(s) alleged or contained” in the *Quixtar* action and the *Oliver* action, the Prior Notice Exclusion in the Policies bars coverage for the *Parker*, *Pontrelli* and *Gonzalez* actions under the Policies.

8. In addition, the Policies each contain a Pending or Prior Litigation Exclusion, which bars coverage for Claims “alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in [the applicable Policy], any pending or prior . . . litigation . . . of which an Insured had notice, including any Claim alleging or derived from the same or essentially the same facts, or the same or related Wrongful Act(s), as alleged in such pending or prior litigation.” Here, the Pending or Prior Date in each of the Policies for the first \$1 million is a date prior to the filing of the *Quixtar* action and the applicable dates for remaining \$9 million in limits under each of the Policies are dates that post-date the filing of the *Quixtar* action. Because the *Parker*, *Pontrelli* and *Gonzalez* actions “alleg[e] or derive[] from the same or essentially the same facts, or the same or related Wrongful Act(s), as alleged in” the *Quixtar* action, to the extent coverage is not otherwise excluded under the Policies, the Pending or Prior

Litigation Exclusion bars coverage for the \$9M excess of the first \$1M in coverage available under the 2012 Policy for the *Parker* action. Likewise, the Pending or Prior Litigation Exclusion bars coverage for the \$9M excess of the first \$1M in coverage available under the 2013 Policy for the *Pontrelli* and *Gonzalez* actions.

9. Further, no coverage exists for amounts sought in the *Parker*, *Pontrelli* and *Gonzalez* actions to the extent the relief sought in those actions does not constitute “Loss” under the Policies. The definition of “Loss” expressly carves out “matters which may be deemed uninsurable under applicable law.” The *Parker*, *Pontrelli* and *Gonzalez* actions each request that MonaVie be compelled to return funds received for its products that was improperly obtained based on the allegations in the complaints and for the restitution and for disgorgement of any other wrongfully acquired funds. Such amounts do not constitute “Loss” to the extent they are uninsurable as a matter of law.

### **PARTIES**

10. Plaintiff Starr is a corporation organized and existing under the laws of the State of Texas with its principal place of business located in New York, New York. Starr legally transacts insurance business in the State of Utah and within the geographical jurisdiction of this Court.

11. Defendant MonaVie, Inc. is a corporation organized and existing under the laws of the State of Utah with its principal place of business in South Jordan, Utah.

12. Defendant MonaVie, LLC is a Delaware limited liability company with its principal place of business in South Jordan, Utah. Defendant MonaVie, LLC is a subsidiary of

or otherwise controlled by MonaVie, Inc. Upon information and belief, the members of MonaVie, LLC are not citizens of New York or Texas.

### **JURISDICTION AND VENUE**

13. Starr brings this action for declaratory judgment pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, for the purposes of determining a question of actual controversy between the parties. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). There is complete diversity between the parties, and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391. A substantial part of the events giving rise to the claims at issue occurred in this district.

15. This action is ripe for adjudication.

### **FACTUAL ALLEGATIONS**

#### **A. The Starr Policies**

16. The 2012 Policy was issued to MonaVie with a claims-made policy period of May 1, 2012 to May 1, 2013 and provides specified coverage and limits of \$10 million each Claim and in the aggregate, subject to a \$75,000 retention for each Claim. 2012 Policy, Declarations, Items 1-5. A true and correct copy of the 2012 Policy, without the application materials, is attached as Exhibit 1.

17. The 2013 Policy was issued to MonaVie with a claims-made policy period of May 1, 2013 to May 1, 2014, extended by endorsement to June 30, 2014, and provides specified coverage and limits of \$10 million each Claim and in the aggregate, subject to a \$100,000

retention for each Claim. 2013 Policy, Declarations, Items 1-5, as amended by Endorsement Nos. 10 and 11. A true and correct copy of the 2013 Policy, without the application materials, is attached as Exhibit 2.

18. In relevant part, the Policies provide that “[Starr] shall pay on behalf of the Company the Loss arising from a Claim first made during the Policy Period (or Discovery Period, if applicable) against the Company for any Wrongful Act, and reported to [Starr] in accordance with the terms of this policy.” Policies, Directors and Officers Liability Coverage Section (“D&O Coverage Section”), Clause 1.C.

19. The “Company” is defined to include the “Parent Company” named in Item 1 of the Declarations as well as “any Subsidiary.” *Id.*, General Terms & Conditions Section (“GT&C Section”), Clause 2(c) and (i). MonaVie, Inc. is the entity named in Item 1 of the Declarations and MonaVie, LLC is a Subsidiary of MonaVie, Inc., and thus both entities constitute the “Company.”

20. With respect to the D&O Coverage Section, the Policies define “Claim” to mean, in relevant part, any “judicial, administrative or regulatory proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an Insured, including any appeal therefrom, which is commenced by . . . service of a complaint or similar pleading.” *Id.*, D&O Coverage Section, Clause 2(a)(i).

21. “Loss” is defined, in relevant part, as:

(1) damages, settlements or judgments; (2) pre-judgment or post-judgment interest; (3) costs or fees awarded in favor of the claimant; (4) punitive, exemplary or the multiplied portion of any multiple damages awards, but only to the extent that such damages are insurable under the applicable law most favorable to the insurability of such damages; . . . and (6) Defense Costs.



*Id.*, D&O Coverage Section, Clause 2(h).

22. The Policies further provide that :

“Loss” does not include:(i) any amounts for which the Insureds are not legally liable; (ii) any amounts which are without legal recourse to the Insureds; (iii) taxes; (iv) fines and penalties, except as provided for in Definition (h) (4) above; (v) matters which may be deemed uninsurable under applicable law; or (vi) any amounts paid or incurred in complying with a judgment or settlement for non-monetary or injunctive relief, but solely as respects the Company.

*Id.*

23. “Wrongful Act” is defined as, “with respect to the Company, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the Company.” *Id.*, D&O Coverage Section, Clause 2(l)(3).

24. The Policies provide that “if written notice of a Claim has been given to [Starr] pursuant to this Clause 5, then a Claim which is subsequently made against an Insured and reported to [Starr] pursuant to this Clause 5, alleging, arising out of, based upon or attributable to the facts alleged in the previously noticed Claim, or alleging the same or related Wrongful Act alleged in the previously noticed Claim, shall be considered related to the previously noticed Claim and shall be deemed to have been made at the time notice of the previously noticed Claim was provided to [Starr].” *Id.*, GT&C, Clause 5.

25. The Policies state that Starr “has the right and duty to defend any Claim against any Insured covered under this policy, even if such Claim is false, fraudulent or groundless . . .” *Id.*, GT&C, Clause 6. The Policies further provide that “[Starr] shall pay Defense Costs prior to the final disposition of any Claim, excess of the applicable retention and subject to all other terms and conditions of this policy. In the event and to the extent that the Insureds shall not be entitled to payment of such Loss under the terms and conditions of this policy, such payments by

[Starr] shall be repaid to [Starr] by the Insureds, severally according to their respective interests.”

*Id.*

26. The Prior Notice Exclusion in the D&O Coverage Section of the Policies provides that coverage is barred for any Loss in connection with any Claim:

alleging, arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related Wrongful Act(s) alleged or contained in any Claim which has been reported, or in any circumstances of which notice has been given, before the inception date of this policy as set forth in Item 2 of the Declarations, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time.

*Id.*, D&O Coverage Section, Clause 3(g).

27. The Pending or Prior Litigation Exclusion in the D&O Coverage Section of the Policies provides that coverage is barred for any Loss in connection with any Claim:

alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an Insured had notice, including any Claim alleging or derived from the same or essentially the same facts, or the same or related Wrongful Act(s), as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation.

*Id.*, D&O Coverage Section, Clause 3(f).

28. Pursuant to the Declarations of the Policies, the Pending or Prior Date for the first \$1 million is January 16, 2004; September 18, 2008 for the next \$4 million and November 3, 2008 for the final \$5 million of the \$10 million aggregate limit of the Policies. *Id.*, Declarations, Item 6.

## **B. The MonaVie Litigation**

### **(i) The Pre-Policy Period Lawsuits**

29. In March 2008, Quixtar, Inc., a competitor of MonaVie, filed the *Quixtar* action against MonaVie in this Court. It alleged violations of non-compete provisions concerning

MonaVie's alleged intentional interference with Quixtar's distributors and false advertising and unfair trade practices based on the promotion of false medical benefits of MonaVie's juice products. A true and correct copy of the *Quixtar* complaint is attached as Exhibit 3.

30. Among other allegations, the *Quixtar* action specifically alleges that MonaVie utilizes a multi-level marketing scheme, similar to Quixtar's, and that through this marketing scheme and MonaVie's distributors, MonaVie falsely represented and made misleading statements concerning the health benefits of its juice products, including that the juices work as a pain reliever, sleep aid and/or to cure cancer.

31. The *Quixtar* complaint further alleges that MonaVie uses its website and celebrity, medical expert and other testimonials to falsely misrepresent the alleged benefits of its products, including by NASCAR driver Geoff Bodine and Dr. Lou Niles, in order to deceive MonaVie's customers into purchasing its products.

32. Based on these and other allegations, the *Quixtar* action asserted causes of action for violations of the Lanham Act, the Utah Truth in Advertising Act, tortious interference with business relationships and civil conspiracy. As to relief, the *Quixtar* action sought disgorgement of MonaVie's profits as well as injunctive and other relief.

33. Upon information and belief, MonaVie tendered the *Quixtar* action to Zurich, its D&O carrier at the time the *Quixtar* action was filed, and Zurich defended the *Quixtar* action under its policy.

34. In December 2010, Joe Neal Oliver filed the *Oliver* action against MonaVie in Arkansas state court. A true and correct copy of the *Oliver* complaint is attached as Exhibit 4.

35. The *Oliver* action alleges that MonaVie and its distributors, through its multi-level marketing scheme, have engaged in a fraudulent scheme to market MonaVie's juice products and sell them to consumers by falsely promoting the health and medicinal benefits of its juice products.

36. In support of these false representations, the *Oliver* action alleges that MonaVie uses its website and celebrity, medical expert and other testimonials to misrepresent the alleged benefits of its products, including by NASCAR driver Geoff Bodine and Dr. Lou Niles, in order to deceive MonaVie's customers into purchasing its products at inflated prices that have no health benefits at all.

37. Based on these and other allegations, the *Oliver* action asserted causes of action for civil conspiracy, negligence, violations of the Arkansas Deceptive Trade Practices Act, unjust enrichment, fraud and constructive fraud. As to relief, the *Oliver* complaints sought to recover the amounts plaintiff and the putative class overpaid for the MonaVie products and disgorgement of other amounts that MonaVie was unjust enriched.

38. MonaVie tendered the *Oliver* action to Allied World, its D&O carrier at the time the *Oliver* action was filed. Allied World defended the *Oliver* action under a full reservation of rights and filed an action seeking a declaration of no coverage under its policy for the *Oliver* action on the grounds, inter alia, that it relates back to the *Quixtar* action.

**(ii) The *Parker* Action**

39. In November 2012, Adam Parker and Andrew Harbut filed the *Parker* action, a putative class action complaint brought on behalf of California residents and a sub-class of

Missouri residents, in California federal district court. A true and correct copy of the *Parker* complaint is attached as Exhibit 5.

40. The *Parker* action alleges false and misleading advertising in connection with claims by MonaVie and its independent distributors that MonaVie's juices prevent and treat illnesses and that MonaVie is aware that no clinical studies can support its claim concerning the benefits of its juices.

41. The *Parker* action specifically alleges that MonaVie, via its multi-level marketing scheme with its independent distributors and on MonaVie's website, disseminates false statements pertaining to the health and curative benefits of MonaVie's juice products and that the false and misleading representations led consumers to purchase the allegedly overpriced juice products.

42. Based on these and other allegations, the *Parker* action asserts causes of action for "fraud, deceit and misrepresentation," violations of Utah Consumer Sales Practices Act, violations of Missouri's Merchandising Practices Act, violations of California's False Advertising and Unfair Competition Laws, civil conspiracy, violations of the federal Magnuson-Moss Act and Racketeer Influenced and Corrupt Organizations Act, and violations of the Utah Pattern of Unlawful Activity Act. As to relief, the *Parker* action seeks compensatory, punitive and statutory damages as well as injunctive relief.

43. MonaVie reported the *Parker* action to Starr under the 2012 Policy.

44. Under a full and complete reservation of all of its rights, in letters dated November 20, 2012 and February 20, 2013, LVL Claims Services, LLC ("LVL"), on behalf of

Starr, agreed to defend the *Parker* action and appointed defense counsel. At this time, Starr continues to fund the defense of the *Parker* action pending resolution of this action.

**(iii) The *Pontrelli* and *Gonzalez* Actions**

45. On the same day in August 2013, MonaVie was named as a defendant in the *Pontrelli* and *Gonzalez* actions, which are putative class action complaints filed in New Jersey federal district court and California federal district court, respectively. True and correct copies of the *Pontrelli* complaint and the *Gonzalez* complaint are attached as Exhibit 6 and Exhibit 7, respectively.

46. The *Pontrelli* and *Gonzalez* actions allege false and misleading advertising in connection with MonaVie's juices and false claims related to both the health benefits of the juices and the benefits of becoming a MonaVie distributor.

47. The *Pontrelli* and *Gonzalez* actions specifically allege that MonaVie and its distributors, through its multi-level marketing scheme, have engaged in a fraudulent scheme to market MonaVie's juice products and sell them to consumers by falsely promoting the health and medicinal benefits of its juice products.

48. The *Pontrelli* and *Gonzalez* actions allege that MonaVie uses its website and celebrity, medical expert and other testimonials to misrepresent the alleged benefits of its products, including by NASCAR driver Geoff Bodine and Dr. Lou Niles, in order to deceive MonaVie's customers into purchasing its products at inflated prices that have no health benefits at all.

49. Based on these and other allegations, the *Pontrelli* action asserts causes of action for violations of the New Jersey Consumer Fraud Act, fraud and unjust enrichment. As to relief, the *Pontrelli* action seeks restitution, actual and punitive damages and injunctive relief.

50. Based on the same allegations, the *Gonzalez* action asserts causes of action for violations of California's Unfair Competition Law, false and misleading advertising, violations of California's Legal Remedies Act, fraud and unjust enrichment. As to relief, the *Gonzalez* action seeks restitution, damages and injunctive relief.

51. MonaVie reported the *Pontrelli* and *Gonzalez* actions to Starr under the 2013 Policy.

52. Under a full and complete reservation of all of its rights, Starr agreed to defend the *Pontrelli* and *Gonzalez* actions and appointed defense counsel. At this time, Starr continues to defend the *Pontrelli* and *Gonzalez* actions pending resolution of this action.

**C. Coverage Declination for the *Parker*, *Pontrelli* and *Gonzalez* Actions**

53. In a letter dated May 23, 2014, Starr denied coverage for the *Parker*, *Pontrelli* and *Gonzalez* actions under the 2012 Policy and the 2013 Policy.

54. In the May 23 letter, Starr advised MonaVie that coverage was barred under the Policies for the *Parker*, *Pontrelli* and *Gonzalez* actions under the Prior Notice Exclusion and the Pending or Prior Litigation Exclusion and that, even if coverage were available for the *Parker*, *Pontrelli* and *Gonzalez* actions, the relief sought by the plaintiffs in those actions would not constitute Loss under the Policies.

55. Starr agreed to continue to defend MonaVie in the *Parker*, *Pontrelli* and *Gonzalez* actions under a complete reservation of all of its rights under the Policies and at law, including

the right to obtain reimbursement of any amounts paid under the Policies for the defense of the *Parker, Pontrelli* and *Gonzalez* actions.

### **CONTROVERSY AND RIPENESS**

56. Starr is entitled to declarations that the Policies do not provide coverage to MonaVie for the *Parker, Pontrelli* or *Gonzalez* actions.

57. Upon information and belief, MonaVie has taken or will take issue with Starr's determination that coverage is not afforded under the Policies for the *Parker, Pontrelli* or *Gonzalez* actions.

58. The defenses to coverage and related issues raised by Starr will directly govern Starr's obligations under the Policies. These matters are therefore ripe for adjudication.

### **COUNT I**

#### **DECLARATORY JUDGMENT THAT COVERAGE IS BARRED FOR THE PARKER, PONTRELLI AND GONZALEZ ACTIONS UNDER THE POLICIES BASED ON THE PRIOR NOTICE EXCLUSION**

59. Starr repeats and incorporates by reference the allegations of paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. The Prior Notice Exclusion of the of each of the Policies precludes from coverage any Loss in connection with any Claim alleging, arising out of, based upon or attributable to the same or essentially the same facts alleged, or to the same or related Wrongful Acta alleged or contained in any Claim which has been reported, or in any circumstances of which notice has been given, before the inception date of each Policy – *i.e.*, May 1, 2012 for the 2012 Policy and May 1, 2013 for the 2013 Policy – under any policy, whether excess or underlying, of which this



policy is a renewal or replacement or which it may succeed in time. Policies, D&O Coverage Section, Clause 3(g).

61. The *Quixtar* action was reported to Zurich under a prior D&O policy issued to MonaVie.

62. The *Oliver* action was reported to Allied World under a prior D&O Policy issued to MonaVie.

63. The *Parker*, *Pontrelli* and *Gonzalez* actions allege, arise out of, are based upon or attributable to the same or essentially the same facts alleged, or to the same or related Wrongful Acts alleged or contained in the *Quixtar* action and the *Oliver* action in that each of the actions allege false and misleading statements and representations by MonaVie in connection with the multi-level marketing scheme of the purported health and curative benefits of the MonaVie juices.

64. Because the *Parker*, *Pontrelli* and *Gonzalez* actions allege, arise out of, are based upon or attributable to the same or essentially the same facts alleged, or to the same or related Wrongful Acts alleged or contained in the *Quixtar* action and the *Oliver* action, the Prior Notice Exclusion precludes coverage for the *Parker* action in its entirety under the 2012 Policy and for the *Pontrelli* and *Gonzalez* actions in their entirety under the 2013 Policy.

65. Starr is entitled to a declaration that the 2012 Policy and the 2013 Policy do not provide coverage for the *Parker*, *Pontrelli* or *Gonzalez* actions, and therefore Starr has no obligation to defend or indemnify MonaVie with respect to the *Parker*, *Pontrelli* or *Gonzalez* actions based on the Prior Notice Exclusion in the Policies.

**COUNT II**

**DECLARATORY JUDGMENT THAT COVERAGE IS BARRED FOR THE *PARKER, PONTRELLI* AND *GONZALEZ* ACTIONS UNDER THE POLICIES BASED ON THE PENDING OR PRIOR LITIGATION EXCLUSION**

66. Starr repeats and incorporates by reference the allegations of paragraphs 1 through 65 of this Complaint as if fully set forth herein.

67. To the extent that the Court does not find that the Prior Notice Exclusion in the Policies bars coverage for the *Parker, Pontrelli* and *Gonzalez* actions in their entirety, the Pending or Prior Litigation Exclusion serves as a bar to coverage for the \$9 million excess of the \$1 million in coverage provided by the 2012 Policy as well as the \$9 million excess of the \$1 million in coverage provided by the 2013 Policy.

68. The Pending or Prior Litigation Exclusion in the Policies precludes from coverage under each Policy any Loss in connection with any Claim alleging, arising out of, based upon or attributable to, as of the Pending or Prior Date set forth in Item 6 of the Declarations as respects this Coverage Section, any pending or prior: (1) litigation; or (2) administrative or regulatory proceeding or investigation of which an Insured had notice, including any Claim alleging or derived from the same or essentially the same facts, or the same or related Wrongful Acts, as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation. Policies, D&O Coverage Section, Clause 3(f).

69. The Pending or Prior Date for the first \$1 million of coverage under both the 2012 Policy and the 2013 Policy is January 16, 2004; September 18, 2008 for the next \$4 million, and November 3, 2008 for the final \$5 million of the \$10 million aggregate limit. *Id.*, Declarations, Item 6.

70. The *Quixtar* action was filed in March 2008, subsequent to the January 16, 2004 Pending or Prior Date for the first \$1 million in coverage but prior to the September 18, 2008 and November 3, 2008 Pending or Prior Dates for the remaining \$9 million in coverage under the 2012 Policy and the 2013 Policy.

71. The *Parker*, *Pontrelli* and *Gonzalez* actions allege or derive from the same or essentially the same facts, or the same or related Wrongful Acts, as alleged in the *Quixtar* action in that each of the actions allege false and misleading statements and representations by MonaVie in connection with the multi-level marketing scheme of the purported health and curative benefits of the MonaVie fruit juices.

72. Because the *Parker*, *Pontrelli* and *Gonzalez* actions allege or derive from the same or essentially the same facts, or the same or related Wrongful Acts, as alleged in the *Quixtar* action, the Pending or Prior Litigation Exclusion in the 2012 Policy serves as a bar to coverage for the \$9 million excess of \$1 million in coverage for the *Parker* action, and the Pending or Prior Litigation Exclusion in the 2013 Policy serves as a bar to coverage for the \$9 million excess of \$1 million in coverage for the *Pontrelli* and *Gonzalez* actions.

73. Starr is entitled to a declaration that the \$9 million excess of \$1 million in coverage under the 2012 Policy for the *Parker* action and the 2013 Policy for the *Pontrelli* and *Gonzalez* actions is excluded by the Pending or Prior Litigation Exclusion in the 2012 Policy and the 2013 Policy, respectively.

**COUNT III**

**DECLARATORY JUDGMENT THAT COVERAGE IS BARRED FOR THE *PARKER, PONTRELLI AND GONZALEZ* ACTIONS UNDER THE POLICIES BASED ON THE UNISURABILITY OF THE DAMAGES SOUGHT**

74. Starr repeats and incorporates by reference the allegations of paragraphs 1 through 73 of this Complaint as if fully set forth herein.

75. The Policies provide coverage only for Loss as defined in the Policies, and expressly carve out from that term “matters which may be deemed uninsurable under applicable law.” Policies, D&O Coverage Section, Clause 2(h).

76. Plaintiffs in the *Parker, Pontrelli* and *Gonzalez* actions request the return by MonaVie of amounts plaintiffs and other members of the respective putative classes allegedly overpaid for the MonaVie juice products as well as restitution and disgorgement.

77. To the extent plaintiffs in the *Parker, Pontrelli* and *Gonzalez* actions successfully recover the return of amounts for overpayment, restitution or disgorgement, such amounts would be restitutionary in nature and uninsurable as a matter of law.

78. Starr is entitled to a declaration that there is no coverage under the D&O Coverage Section of the Policies for amounts sought by plaintiffs in the *Parker, Pontrelli* and *Gonzalez* actions that fall outside the definition of “Loss.”

**COUNT IV**

**DECLARATORY JUDGMENT THAT STARR IS ENTITLED TO REIMBURSEMENT OF ANY DEFENSE COSTS PAID UNDER THE POLICIES**

79. Starr repeats and incorporates by reference the allegations of paragraphs 1 through 78 of this Complaint as if fully set forth herein.

80. The Policies provide that “[i]n the event and to the extent that the Insureds shall not be entitled to payment of [Defense Costs] under the terms and conditions of this policy, such payments by [Starr] shall be repaid to [Starr] by the Insureds, severally according to their respective interests.” Policies, GT&C, Clause 6.

81. To the extent Starr pays Defense costs in connection with the *Parker*, *Pontrelli* or *Gonzalez* actions, such payments are made subject to a complete reservation of all of Starr’s rights under the 2012 Policy and the 2013 Policy, respectively, including the right to obtain reimbursement of all amounts Starr pays in the event and to the extent that it is determined that coverage is not available for the *Parker*, *Pontrelli* or *Gonzalez* actions.

82. Coverage for the *Parker*, *Pontrelli* and *Gonzalez* actions is not available under the Policies, in whole or in part, based on the Prior Notice Exclusion, the Pending or Prior Litigation Exclusion and the Policies’s definition of “Loss.”

83. Starr is entitled to an order requiring MonaVie to reimburse Starr for any Defense Costs advanced under the 2012 Policy in defense of the *Parker* actions and for any Defense Costs advanced under the 2013 Policy in defense of the *Pontrelli* and *Gonzalez* actions that are not covered.

**OTHER POTENTIALLY APPLICABLE COVERAGE DEFENSES**

84. Other terms, conditions or exclusions of the Policies may ultimately be implicated. Nothing in this Complaint should be construed as a waiver by Starr of any other coverage defenses under the Policies with respect to any claim or potential claim and Starr reserves the right to raise all other terms, conditions and exclusions of the Policies, including without limitation the “Specific Litigation/Event Exclusion” in the 2013 Policy (2013 Policy,

D&O Coverage Section, Clause 3, as amended by Endorsement No. 9) and the “Anti-Trust Exclusion” in the 2013 Policy (2013 Policy, D&O Coverage Section, Clause 3, as amended by Endorsement No. 5), as defenses to coverage for the *Parker*, *Pontrelli* and *Gonzalez* actions as appropriate.

**PRAYER FOR RELIEF**

WHEREFORE, Starr requests that this Court enter a declaratory judgment in its favor:

- A. Declaring that, for the reasons set forth in Count I, the Policies do not provide coverage for the *Parker*, *Pontrelli* and *Gonzalez* actions, and therefore Starr has no obligation to defend or indemnify MonaVie with respect to the *Parker*, *Pontrelli* or *Gonzalez* actions;
- B. Declaring that, for the reasons set forth in Count II, the \$9 million excess of \$1 million in coverage under the 2012 Policy for the *Parker* action and the 2013 Policy for the *Pontrelli* and *Gonzalez* actions is excluded by the Pending or Prior Litigation Exclusion in the respective Policies;
- C. Declaring that, for the reasons set forth in Count III, no coverage exists for the relief sought in the *Parker*, *Pontrelli* and *Gonzalez* actions to the extent that it falls outside the definition of “Loss” in the D&O Coverage Section of the Policies;
- D. Declaring that, for the reasons set forth in Count IV, Starr is entitled to reimbursement of all amounts advanced by Starr as Defense Costs in defense of the *Parker*, *Pontrelli* and *Gonzalez* actions as well as an award of prejudgment interest; and

E. Awarding Starr such additional declaratory and other relief as shall be found to be appropriate under the circumstances.

Respectfully submitted,

Dated: May 23, 2014

By: /s/ Jeffrey L. Silvestrini

Jeffrey L. Silvestrini  
*Attorneys for Plaintiff Starr Indemnity &  
Liability Company*

Daniel J. Standish (pro hac vice to be filed)  
Parker J. Lavin (pro hac vice to be filed)  
Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006  
202.719.7000  
dstandish@wileyrein.com  
plavin@wileyrein.com

Jeffrey L. Silvestrini  
Vernon L. Hopkinson  
Cohne Rappaport & Segal, P.C.  
257 E. 200 S., Ste. 700  
Salt Lake City, UT 84147-0008  
801.532.2666  
jeff@crslaw.com  
vern@crslaw.com